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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,423	07/18/2003	Terry A. Miller	MILLERT-1	1748

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,423

Applicant(s)

MILLER ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7, 8, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,651,601 to La Montagne in view of United Kingdom Patent GB 1544630 to James, U.S. Patent No. 3,962,825 to O'Connell and U.S. Patent No. 4,887,385 to James et al.

Regarding Claims 1, 8, 10, and 11, La Montagne teaches a reusable floral arrangement assembly and method comprising a water (La Montagne Fig. 3) impermeable tray having a top surface, a bottom surface a continuous side wall (La Montagne see attached Fig. 5) that extends upwardly from the top surface; a connector (La Montagne Fig. 3 #2) disposed on the bottom surface of the tray; a support (La Montagne Fig. 2 #19 and 18) for holding the tray, wherein the support is selectively attachable to the connector on the bottom surface of the tray; a circular foam element that include a base level element (La Montagne Fig. 3 #10) wherein the base level element rests upon the top surface of the tray and; and a grid work (La Montagne Fig. 3 #14) extending over the foam structure, the grid work having an open bottom edge that selectively engages the continuous wall of the tray with a snap connection (La Montagne Col. 2 line 46-50), wherein the grid work of evenly distributed size areas

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envelopes the foam structure and holds the foam structure in a set position on the tray while the grid work demarcates both the vertical surfaces and the horizontal surfaces exposed on the foam structures into a plurality of sized areas (La Montagne Fig. 2 and 6 #14).

La Montagne is silent on a plurality of circular foam elements wherein the base level element and the at least one subsequent level element differ in diameter and are stacked atop each other forming a foam structure having a tiered configuration with exposed vertical surfaces and horizontal surfaces. However, James teaches that it is old and notoriously well-known to place multiple levels of foam on a tray surface (James Fig. 4 #1 and 11) cover by grid work that exposes the foam structure. It would have been obvious to one of ordinary skill in the art to further modify the teachings of La Montagne with the teachings of James at the time of the invention since the modification is merely a duplication of a known element performing the same intended for a multiple effect to increase the flower insertion area for a larger arrangement (James page 3 line 39-55).

La Montagne as modified is silent on the circular foam layers are different diameters to produce a tiered configuration and the grid demarks each level of the foam structure. However, O'Connell teaches that it is old and notoriously well-known to attached tiered structures of different sizes/dimensions to a floral tray (O'Connell Fig. 1 #12 10 and 11) where the grid fits the shape of the tiered structures. It would have been obvious to one of ordinary skill in the art to further modify the teachings of La Montagne with the teachings of O'Connell since the modification is merely a change in

size/shape of the known grid performing the same intended function modified for a desired aesthetic appearance and to securely hold the foam/structure in place on the tray and does not present a patentably distinct limitation [*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)].

LaMontage as modified teaches it is old and notoriously well-known in the art to place layers of floral foam on top of each other and to secure the foam with a grid that corresponds to the shape of the foam structure, but is silent on explicitly teaching that the tiered foam is a tier of circular foams of different diameters or cog shaped foam tiers with square cog projections. However, James et al '385 teaches general knowledge in the art that it is old and notoriously well-known to cut the foam into a variety of shapes and to elaborate on the basic shapes of foam by adding additional pieces of foam (James Col. 1 line 20-30). It would have been obvious to one of ordinary skill in the art further modify the teachings of LaMontage with the teachings of James et al '385 at the time of the invention since the modification is merely a change in size/shape to create a desired aesthetic effect to create a floral arrangement for a particular event e.g. wedding, birthday, business meeting etc and does not present a patentably distinct limitation. [*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)]. Furthermore, a division of plant husbandry includes topiary articles. In the art of topiary it is general knowledge that support structure for the plants can be shaped into a variety of shapes and sizes to create a desired aesthetic effect, e.g. animals, inanimate objects, geometric shapes.

Regarding Claim 7 and 12, La Montagne as modified teaches the support is selected from the group consisting of bouquet handles, centerpiece stands (La Montagne Fig. 3 #19 and 18) and ground spikes.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,651,601 to La Montagne in view of United Kingdom Patent GB 1544630 to James, U.S. Patent No. 3,962,825 to O'Connell and U.S. Patent No. 4,887,385 to James et al as applied to claim 1 and 8 above, and further in view of French Patent FR 2620591 to Roder.

Regarding Claim 3 and 9, La Montagne as modified is silent on the tray includes at least one prong that extends up into the foam structure, thereby helping retain the plurality of disposable foam elements in the set position on the tray. However, Roder teaches a floral display tray with at least one prong (Roder Fig. 1 #4). It would have been obvious to one of ordinary skill in the art to further modify the teachings of La Montagne with the teachings of Roder at the time of the invention for the known advantage of securing the foam in place for ease of assembly.

Response to Arguments

Applicant's arguments filed 06 March 2006 have been fully considered but they are not persuasive.

LaMontagne is the primary reference and was cited to teach the foam with a grid on a support surface. James teaches general knowledge of placing multiple pieces of foam on top of each other while under a grid. O'Connell is cited purely to teach the

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general knowledge of shaping the grid to match the shape of the structure it is holding in place on the support surface. Finally, James '385 is cited only to teach the general knowledge in the industry of changing the shape and size of the floral foam for a desired aesthetic effect.

Examiner maintains that it is well-known in the art to place floral foam on a support surface and to secure the foam in place by a grid pattern. Examiner maintains that cited prior art of record provides a clear teaching of general knowledge of one of ordinary skill in the art that it is known to create tiers of floral foam and to change the shape and size of the foam to create a particular aesthetic appearance. Merely changing the size and shape of the tiers does not present a patentably distinct limitation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

04 May 2006